

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Before the Board of Patent Appeals and Interferences

In re the Application of

Martin BROBERG.

Serial No.: 10/722,575

Filed: November 28, 2003

For: **A PROCESS FOR THE MANUFACTURING OF A THERMOSETTING  
LAMINATE**

**REPLY BRIEF**

Thomas P. Pavelko  
Registration No.: 31,689  
NOVAK DRUCE & QUIGG LLP  
1300 Eye Street, NW  
1000 West Tower  
Washington, D.C. 20005  
Telephone: (202) 659-0100  
Facsimile: (202) 659-0105

Attorney for Appellant

Date: March 29, 2010

## **INTRODUCTION**

In the Examiner's Answer under the heading "6" Grounds of Rejection reviewed on Appeal", the Examiner states that "U.S. 6,761,961 is the English language equivalent of WO 01/21633 and not a separately applied reference".

Appellant thanks the Examiner for correcting the basis for the Grounds of Rejection.

Under the heading "(7) Claims Appendix", Appellants agree with claim 1, as reproduced by the Examiner from the middle to the end of page 3, of the Examiner's Answer.

## **RESPONSE TO ARGUMENTS**

It is noted that in independent claim 1, the balance layer "consisting of a single polymer layer" is an "expanded physically cross-linked polyolefin with closed cells whereby said balance layer and said thermosetting laminate are joined with said fiber board core by pressing". Appellants wish to direct attention to these limitations in this Reply Brief, though not intending to lessen the arguments set forth in the opening Brief.

In making the proposed combination of Sjöberg in view of either JP '058 or JP '842, Breitscheidel et al. and Moebus (WO 01/21366), the Examiner correctly points out that Sjöberg provides a carrying core layer "e.g., fiber board, providing a dampening (e.g., acoustic dampening) foil layer of a thermoplastic polyolefin elastomer on the upper side of the core layer (emphasis added)". The Examiner concedes that "Sjöberg is silent as to the lower visible surface below the core layer consisting of a balance layer (emphasis added)".

Notwithstanding the foregoing, no possible combination of Sjöberg with either JP '058 or JP '842, together with Breitscheidel et al. and Moebus could establish a prima facie case of obviousness for the claimed invention.

Neither JP '058 nor JP '842 teach an expanded physically cross linked polyolefin with closed cells as a balance layer.

The Examiner now concedes as much with the statement in the middle of the page 5 of the Examiner's Answer that "Sjöberg as modified by either one of JP '058 or JP '842 do not specifically describe the balance layer as consisting of an expanded physically cross-linked polyolefin with closed cells". The Examiner, although alleging that Breitscheidel et al. is

exemplary of the use of closed cell polyolefin foam material as cushioning for flooring wherein the foam is expressly described as expanded physically cross-linked polyolefin with closed cells, Breitscheidel et al. is not producing a balance layer beneath a core, nor in fact does he attach his material to a core at all. Breitscheidel et al. is making a padding for use underneath materials such as artificial grass or turf, see for example the Abstract, as well as column 1, lines 22-45. Thus, Breitscheidel et al. provides absolutely no teaching of the use of a physically cross-linked polyolefin with closed cells as either a balance layer beneath a laminated material; a laminae beneath a core of a laminate material, or as a substitute for non-cross-linked polyolefins used for such purposes. Thus, contrary to the Examiner's naked conclusion of obviousness stated in the sentence bridging pages 5-6 of the Examiner's Answer, that it would have been obvious to substitute the Breitscheidel et al. material for any of the other materials such would not have been obvious as the materials of Breitscheidel et al. are not used in the same environment, are not used for the same purpose, nor do they achieve the same result as the JP '058 or JP '842 materials. Moreover, even if such a combination were made as suggested by the Examiner, the Examiner still concedes that Sjoberg, even as modified by either JP '058, JP '842 and Breitscheidel et al., still does not teach the subsequent steps of cutting a panel into pieces and milling joining edges on the cut panels intended for joining the panels together as claimed. See for example the first full paragraph on page 6 of the Examiner's Answer. While Moebus does disclose a method of manufacturing a decorative laminate, his laminate comprises only a carrying core layer and an upper decorative and abrasion resistant laminate layer on the upper side of the core layer. There is no teaching of previously attaching an expanded physically cross-linked polyolefin with closed cells to such a laminate prior to the cutting and milling steps and, thus, even if combined would not teach the claimed steps in the sequence required by Appellant's claim. Note that the last step of the process of independent claim 1 recites "whereupon the achieved laminate is cut into panels and provided with edges intended for joining" which includes not only the decorative and abrasion resistant thermosetting laminate layer but also the carrying core and a lower visible surface consisting of a balance layer with the balance layer being the expanded physically cross-linked polyolefin with closed cells heretofore discussed.

For all the foregoing reasons, Appellants respectfully submit that the Examiner has simply failed to locate evidence in the prior art disclosing each of Appellants' materials, assembled in the sequence required by Appellants' claims and subsequently cutting such achieved laminate into panels and providing edges intended for joining as in independent claim 1. As all of the remaining claims depend directly or indirectly from independent claim 1 and by statute (35 U.S.C. 112 fourth paragraph) incorporate by reference by all the limitations of claim 1, none of the dependent claims are obvious within the sense of 35 U.S.C. 103 (a). Reversal of all rejections are therefore respectfully requested by the Board.

The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 14-1437, under Order No. 8688.027.US0000.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas P. Pavelko', with a stylized, looping flourish at the end.

Thomas P. Pavelko

Date: March 29, 2010  
Atty Docket No. 8688.027.US0000